OPTICOM
July 15, 1996

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Pay Telephone Reclassification	)	CC Docket No. 96-128
and Compensation Provisions of	)	
the Telecommunications Act of 1996	)	

REPLY COMMENTS OF ONE CALL COMMUNICATIONS, INC. d/b/a OPTICOM

One Call Communications, Inc. d/b/a Opticom ("Opticom"),[1] by its attorneys, hereby submits its reply to the comments in the above-captioned proceeding.[2]

In its initial comments, Opticom supported the Commission's efforts to only prescribe compensation in those situations where adequate compensation is not already provided. Where compensation must be prescribed, Opticom urged the Commission to address autodialer abuse in a manner that is consistent with federal policies Opticom stressed the need for end users to bear the ultimate responsibility for the compensation of payphone service providers, including subscriber 800 calls. In addition, Opticom supported the Commission's proposal to reduce common carrier line charges and supported the adoption of competitive safeguards for payphone services in order to prevent BOCs from engaging in discriminatory and anticompetitive conduct.

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[1]Opticom is an interexchange carrier providing tariffed intrastate, interstate and international 0+ operator services throughout the United States and abroad.

[2]In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996. *Notice of Proposed Rulemaking*. CC Docket No. 96-128, released June 6, 1996, ("Payphone Notice").

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While Opticom continues to believe that its initial positions are critical for implementation of the payphone reclassification and compensation provisions of Section 276 of the Telecommunications Act of 1996 ("1996 Telecom Act"),[3] it limits the discussion in these reply comments to the issues of autodialer abuse, compensation for completed calls, and the right of the Bell Operating Companies ("BOCs"), to have the same rights as other payphone providers to negotiate with location providers to select interLATA carriers.

I. COIN DEPOSITS FOR SUBSCRIBER 800 CALLS IS THE MOST EFFECTIVE AND EFFICIENT MEANS BY WHICH TO SATISFY FEDERAL GOALS TO DETER FRAUD AND ESTABLISH FAIR COMPENSATION

As Opticom proposed in its initial comments,[4] the Commission should require callers placing subscriber 800 calls to pay a local rate via a coin deposit.[5] Requiring consumers to make a coin deposit not only addresses the problem of abuse of subscriber 800 numbers, but it also ensures that private payphone owners ("PPOs") receive fair compensation for every intrastate and interstate call made from their payphones.[6] In other words, a coin-based approach is the most

[3] 47 U.S.C. § 276 (as amended) (directing the Commission, among other things, "to establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone. . . .").

[4] Opticom Comments at 4-5.

[5] Payphone Notice at ¶ 23.

[6] While an advance deposit approach is consistent with the mandate in the 1996 Telecom Act that private payphone owners be fairly compensated for all calls, it potentially conflicts with the prohibition on advance payments by subscribers for calls routed to providers of operator services other than the presubscribed provider. Telephone Operator Consumer Services Improvement Act of 1990, 47 U.S.C. § 226(e)(2), ("TOCSIA"); see also Opticom Comments at fn. 16. Because Opticom believes that the Commission has no other feasible means of effectively avoiding autodialer abuse, the Commission should recommend that Section 226(e)(2) be amended or repealed to permit advance payment by consumers. See *e.g.*, In the Matter of Telephone Company-Cable Television, Cross-Ownership Rules, Section 63-54 -63.58, *Second Report and Order, Recommendation to Congress, Second Further Notice of Proposed Rulemaking*, 7 FCC Rcd 5781, 5847 (1992) (the Commission recommended that the cross-ownership ban in Section 613(b) of the Cable Act be repealed or modified to permit telephone companies to provide video programming within their telephone service areas)

cost-effective method for addressing the Commission's concerns of preventing autodialer abuse and minimizing administrative and transaction costs. In contrast, the proposals to address autodialer abuse suggested by other parties, such as call detection and tracking, sanctions and studies, would impose significant costs on the industry and do little to prevent autodialer abuse.[7]

Moreover, a coin deposit requirement for subscribers would place the cost burden on the appropriate party, the end user placing the call. It has been the Commission's fundamental policy to assign costs to the cost causative user.[8] Indeed, as Intellicall noted, the Commission has previously stated that charging end users who originate calls from payphones would be an ideal solution.[9]

A compensation mechanism that requires the fee to be collected from the 800 subscriber,[10] on the other hand, would require the carrier to pay the additional compensation amount for a call originating from a payphone, while a call from any other location would not incur any additional cost.[11] As Intellicall noted,[12] this would interfere with millions of existing contracts between 800 subscribers and the carrier providing the 1-800 service because 800 subscribers would be required to pay an amount in excess of the contractual amount. Not only

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[7]Comments of MCI Telecommunications Corporation, at 5 (proposing that LECs be required to detect patterns of repeated 800 calling); Comments of GTE Service Corporation, at 5-6 (arguing that once fraud has been determined, LECs and IXCs should be permitted wide latitude to sanction location providers); Comments of AT&T Comments, at 15-16 (recommending that compensation for subscriber 800 calls be based upon studies from a representative sample of central-office-implemented payphones, from which autodialer abuse is less likely).

[8]*See, e.g.*, In the Matter of National Security Emergency Preparedness Telecommunications Service Priority System, 2 FCC Rcd 7124 (1987).

[9]Intellicall Comments at 24, *citing* MTS/WATS Market Structure, 97 FCC 2d 682, 705 (1983).

[10]*See, e.g.*, Comments of the United States Telephone Association, at 5; AT&T Comments at 12-13; Comments of the RBOC Coalition, at 6-7.

[11]Opticom Comments at 6.

[12]Intellicall Comments at 22.

does this create dissatisfaction among subscribers using these services but, it also greatly diminishes the value of such services to the subscribers

In short, while the Commission may be reluctant to impose a requirement of advance payment on transient consumers,[13] and PPOs certainly do not want to discourage use of payphones, the coin deposit requirement presents the best approach to reconcile the goals of both Congress and the Commission. Further, a coin drop is not inconsistent with the Commission's policy that end users pay only once for a call. Thus, a coin drop for subscriber 800 calls would not result in the customer paying twice. This is different than requiring an end user to drop a coin for an access or dial around call where ultimately the end user must pay for the cost of the call at a later date. Therefore, requiring a caller placing a subscriber 800 call to make a coin deposit is no more burdensome than requiring a caller placing a local call to make a coin deposit. It is the transient user that has more control over where calls are placed. Consumers that use "payphones" should, in all instances, "pay" for the convenience of using the "phones."[14]

II. ONLY CALLS THAT ARE COMPLETED AND LONGER THAN FORTY-TWO SECONDS SHOULD BE COMPENSATED

Although the Commission did not propose a definition for a "completed call," there is some dispute in the record concerning what constitutes a "completed call." In order to resolve the dispute over which calls are properly compensable, a clear definition must be established of what constitutes a "completed call." Opticom, therefore supports a proposal that the Commission clarify that "completed calls" are calls that are successfully transmitted to the called

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[13] Payphone Notice at ¶ 27.

[14] Opticom concurs with Intellicall that end users typically pay surcharges far in excess of $.25 for the convenience of using phones in, for instance, hotel rooms, despite the fact that they use access codes or place subscriber 800 calls. Intellicall Comments at 25-26.

party.[15] Generally, carriers do not bill end users for "uncompleted calls," or calls that are not answered by the called party.

As to subscriber 800 calls, Opticom further advocates that the call must be complete and it must last at least forty-two seconds in duration. This is a modified version of Intellicall's timer proposal, which would further mitigate autodialer abuse of subscriber 800 calls.[16] With respect to subscriber 800 calls, therefore, a "completed call" would be a call that is answered at the final destination and that lasts longer than forty-two seconds.

Based on Opticom's records,[17] the majority of subscriber 800 calls that are actually completed last at least forty-two seconds in duration. A forty-two second rule would provide the Commission with an additional method of preventing autodialer abuse. By exempting calls that last less than forty-two seconds, autodialer abuse would be significantly reduced given that such calls typically last less than forty-two seconds.

Although the Commission did not propose or seek comments on the issue, the parties have developed a sufficient record to permit the Commission to adopt a definition for a "completed call." Opticom supports the definition of a "completed call" being defined as one in which the call is answered by the called party. Further, for subscriber 800 calls only, that this definition be expanded to include that the call must last longer than forty-two seconds in duration. Without a clear rule, Congress's mandate that payphone providers be compensated for all completed calls will remain unfulfilled.

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[15] *See* LDDS Comments at 11; MCI Comments at 2; Comments of the Competitive Telecommunications Association, at 11-12 ("CompTel Comments"); Comments of Excel Communications, at 5-6.

[16] Intellicall Comments at 33-36; LDDS Comments at 11-12; CompTel Comments at 11.

[17] *See* Exhibit 1.

III. BOCS SHOULD BE PERMITTED TO NEGOTIATE WITH LOCATION PROVIDERS SO LONG AS COMPETITIVE SAFEGUARDS ARE ADOPTED

As stated in its comments, Opticom does not object to the Commission's proposal to provide the BOCs with equal contractual opportunities to negotiate and contract with location providers,[18] so long as the location provider's ultimate authority to select the presubscribed carrier is preserved.[19] In order to accomplish this goal, the Commission should implement safeguards to ensure that BOCs do not displace the location provider as the decision-maker during the negotiation process.[20]

The BOCs have at their disposal negotiating tactics that their payphone competitors do not. Opticom agrees with the argument that the BOCs' control over the majority of the nation's payphones affords both opportunities and incentives for anticompetitive conduct,[21] such as threatening to remove payphones or offering to bundle favorable pricing of local exchange service with long distance service.[22]

In addition to Opticom's proposal for the selection of presubscribed interexchange carriers be selected through a database similar to SMS used for 800 numbers,[23] Opticom concurs with proposals that would limit the BOCs' ability to route traffic to any single carrier, limit the BOCs'

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[18]Payphone Notice at ¶ 71.

[19]Opticom Comments at 10.

[20]Despite assurances by the BOCs that existing safeguards will prevent discrimination and cross-subsidization by the BOCs, Opticom agrees with Oncor and other commentors that additional safeguards are necessary to limit the ability and incentive of the BOCs to engage in such anticompetitive behavior. *See* Payphone Notice at ¶ 72; Sprint Comments at 30; LDDS Comments at 21-22; Oncor Comments at 5-7.

[21]*See, e.g.*, CompTel Comments at 18.

[22]Oncor Comments at 5.

[23]Opticom Comments at 11.

ability to aggregate payphones into a single commission agreement,[24] and impose separate subsidiary and accounting requirements.[25]

In the event that the Commission determines that permitting BOCs to negotiate with location providers is not in the public interest at this time, Opticom also agrees with commentors that suggest that, once competition has developed in the local exchange market and BOCs are thereby permitted to provide in-region interLATA services, the Commission should revisit the issue.

[24]CompTel Comments at 21.

[25]Section 272 of the 1996 Telecom Act; see also Oncor Comments at 12

IV. CONCLUSION

For the foregoing reasons, Opticom respectfully submits the aforementioned proposals regarding the implementation of Section 276 of the 1996 Telecom Act to develop fair compensation regulations and competitive safeguards

Respectfully submitted,

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EXHIBIT A

Subscriber 800 Trigger Point	A % Complete Correct	B % Complete Incorrect	C % Incomplete Correct	D % Incomplete Incorrect	B+D Total Error Rate	B-D Delta of Error Rates
60 Seconds	70.69%	29.31%	93.62%	6.38%	35.69%	22.93%
54 Seconds	74.36%	25.64%	91.61%	8.39%	34.03%	17.25%
48 Seconds	78.16%	21.84%	88.84%	11.16%	33.00%	10.68%
42 Seconds	82.24%	17.76%	85.81%	14.19%	31.95%	3.57%
36 Seconds	86.68%	13.32%	82.37%	17.63%	30.95%	-4.31%

This data is compiled from actual One Call subscriber 800 experience for the month of June, 1996.

NOTE: In Interpreting this Exhibit, it is important to look at both columns B+D, the Error Rate and B-D, the Delta of the Error Rates. 42 seconds was selected since the ratio of incorrect calls between Complete and Incomplete were the closest. The ratio of incorrect Complete and Incomplete calls needs to be even to balance the interests of those paying compensation and those receiving compensation